

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12302-GAO

LAWRENCE GUZMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ORDER

March 17, 2005

O'TOOLE, D.J.

Upon review of the petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence and the government's opposition and accompanying exhibits, I conclude that an evidentiary hearing is not required and the petitioner's motion ought to be and hereby is dismissed.

At the petitioner's sentencing hearing, I considered all of his departure arguments regarding government overreaching, imperfect entrapment, potential for victimization, and extensive cooperation, as well as other relevant factors, in determining a sentence which is sufficient but not greater than necessary in this instance. 18 U.S.C. § 3553(a). He was not at the time of sentencing, and is not now, entitled to a jury trial on these issues in light of either Blakely v. Washington, 540 U.S. 965 (2003) or United States v. Booker, ___ U.S. ___, 125 S.Ct. 738 (2005). Nor would he have received a more favorable sentence had these cases been decided prior to sentencing. United States v. Antonakopoulos, 399 F.3d 66, 75 (2005).

Lastly, he has failed to identify any acts or omissions of his counsel at sentencing that are alleged not to have been the result of reasonable professional judgment. Strickland v. Washington, 466 U.S. 668, 690 (1984). Accordingly, he has not overcome the “strong presumption that counsel’s conduct [fell] within the wide range of reasonable professional assistance.” Id. at 689. Nor has he demonstrated sufficient prejudice to warrant vacating, setting aside, or correcting his sentence. Id. at 697.

The motion is dismissed.

It is SO ORDERED.

March 17, 2005
DATE

/s/ George A. O’Toole, Jr.
DISTRICT JUDGE